Petitioner's Reply Memorandum to Memorandum for the National Labor Relations Board in Opposition

The Judgment of the Court of Appeals (Pet. App. 10a-13a) was entered on October 8, 1970. The petitioner filed a petition for a Writ of Certiorari which was received by this Court on January 9, 1971. The Solicitor General filed its memorandum in opposition with this Court contending that the Petition for Writ of Certiorari should be denied for the reason that it was received by the Court more than 90 days from the Judgment of the Court below. The following is submitted with respect to that contention.

Approximately 2 weeks prior to January 6, 1971, the undersigned completed the draft of the Petition and submitted same to the New Jersey Appellate Printing Co., Inc. in Woodbridge, New Jersey to print the Petition. At the time of the submission representatives of the printing company were advised that the Petition had to be received by the Supreme Court of the United States no later than January 6, 1971. It was assured that the printing would be completed, filed and served by that date.

In the past the office with which I am associated has utilized the services of this printing company on numerous occasions and it has been our practice to have Briefs filed with the Appellate Courts by this printing company. In the past they have performed their services adequately and our Briefs have been timely filed.

On January 4, 1971 a call was made to the office of the Clerk of the Supreme Court of the United States and inquiry was made as to whether the printing company could file the Petition and our office transmit an appearance form and check for filing fees under separate cover. Our office was advised that this procedure could be utilized. On January 4, 1971, the printing company was notified that

our office would file the appearance form and filing fees under separate cover and that the printing company would file the Petition with the Court and serve it on all interested parties.

The agents of the printing company were again advised at that time that the Petition had to be filed on January 6, 1971, and our office was assured there would be no difficulty. On January 4, 1971, a letter was addressed to the Clerk of the Supreme Court of the United States enclosing an appearance form and a check for filing fees. That letter further advised the Court that the Petition itself would be filed under separate cover by the New Jersey Appellate Printing Co., Inc.

These facts are certified to by the affidavit of a representative of the printing company which is a part of this memorandum and by an affidavit submitted to this Court dated January 25, 1971 by James Rattigan, who is the Vice-President of the printing company.

The Petitioner in this matter has acted in good faith and all reasonable precautions were taken to insure that the Petition would be filed with the Court on time. It was either due to the untimeliness of the mails or to the failure of the printing company to follow our instructions that the Petition was not received by the Court until January 9, 1971.

Under the foregoing circumstances, it would appear that justice requires this Petition to be considered as being timely filed by the Court, or in the alternative, the Court accept the Petition as being filed late due to these extenuating circumstances. To allow the rights of a litigant to be defeated under these circumstances would be, it is respectfully submitted, inequitable and a deprivation of its right to be heard in Court.

It is therefore, urged that this Honorable Court exercise its equitable powers and permit the Petitioner to be heard on the merits of its claim, and request the Respondent file a Memorandum in opposition to the Petition on its merits.

To rule otherwise and to grant the Respondent's request that the Petition be denied for jurisdictional reasons would punish the Petitioner for actions not of his own doing.

Respectfully submitted,

/s/ Thomas E. Durkin, Jr.
THOMAS E. DURKIN, JR.
Attorney for Petitioner
24 Bramford Place
Newark, New Jersey

EARL S. ANDERSON
Of Counsel

Affidavit of James Rattigan

STATE OF NEW JERSEY)
ss.
COUNTY OF MIDDLESEX)

I, James Rattigan, of full age, being duly sworn according to law upon my oath, depose and say:

1. I am the Vice President of New Jersey Appellate Printing Co., Inc., a New Jersey corporation, the principal place of business of which is located at 108 Main Street, Woodbridge, New Jersey.

2. I hereby certify that the facts outlined in the foregoing Reply Brief are accurate and true.

3. I did in fact place copies of the printed petition in the U. S. mail on the date outlined in our affidavit of service presently on file with the Clerk of the United States Supreme Court.

/s/ James B. Rattigan
JAMES B. RATTIGAN

Sworn and subscribed to
before me this 26th day
of February, 1971.